IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/02/2003

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THE HONOURABLE MR. JUSTICE E.PADMANABHAN

WRIT PETITION NO.4086 OF 2000

K. Sukumaran ... Petitioner

-Vs-

1. The Union of India, rep. by
its Secretary to Government,
Department of Treasury &
Developments, New Delhi.

2. The Chief Controller of Explosives,
Nagpur, Nagpur P.O.
Maharashtra State.

3. The Controller of Explosives,
Shastri Bhavan, Chennai.

4. The State of Tamil Nadu, rep. by
the Secretary to Government,
Department of Home Affairs,
Fort St. George, Chennai-9.

5. The District Collector,
Madurai. ... Respondents.

Petition under Article 226 of The Constitution of India to
issue a Writ of Declaration as stated therein.

For petitioner : Mr. S.Parthasarathy

For respondents: Mrs. Meera Gupta, ACGSC,
for RR.1 to 3

Ms. V.Velumani, AGP. For
RR.4 and 5.

:O R D E R
The writ petitioner has prayed for the issue of a Writ of
Declaration declaring that the amended Rule of Clause (c) in sub Rule (1) to
Rule 114 of the Explosives Rules, 1983, as ultra vires of the Constitution

insofar as the petitioner is nd consequently, pass permanent injunction restraining the respondents from implementing the said rule in any way against the petitioner.

2. The writ petitioner K.Sukumaran contends that he is a duly licensed dealer in arms, ammunitions, chemical and explosives and is carrying on the said business at No.6, Venkalakadai Street, Third Lane, Madurai for more than 11 years. A li een issued for sale of explosives under Rule 114 (c) of The Explosives Rules, 1983, framed under The Explosives Act, 1884. The explosives are used to dig wells and also for splitting jallis from the rocks. The gun-powder is a low energy explosive and the fuse is like a device, which will ignite the gun powder with fire thereby splitting the rock and stones. The actual users should furnish their names and addresses and the sale is intimated to the nearest police station. There are sufficient precaut ions in the trade as well as its use. Rule 114 (1)(c) takes away the rights hitherto enjoyed by him to possess for trade to actual user within the State of Tamil Nadu of gun powder not exceeding 5 kgs and 50 metres of safety fuse without any consumer li cence. The amended rule is unconstitutional, discriminatory, violative of Article 19 (1)(g), is against the public interest, is violative of Article 14 and therefore, the rule is liable to be quashed.

3. On behalf of respondents 1 to 3, a counter has been filed. In the counter, it has been stated that the amended rule has been placed before both the Houses of Parliament. The Explosives Rules, 1983 has been framed in the interest of pub lic safety. Law and order is a State subject and at the request of the State, the rule has been amended suitably. The Government of Tamil Nadu requested the Central Government to amend the rule. The proposal for amendment was published and no objectio n was received. Thereafter, the rule has been amended by the Central Government and it was placed before both the Houses of Parliament. Since other States have not requested for amendment of the rule, the amendment is confined only to the States of Ta mil Nadu and Kerala. The rule has been published in the Official Gazette and it has been published in terms of Sub Section (2) of Section 18 of the Explosives Act, 1884.

4. On behalf of respondents No.4 and 5, the learned Additional Government Pleader contended that in view of the peculiar situation, the Government of Tamil Nadu requested the Central Government to amend the rule and the object being the sec e public and the State. The amended rule in no way offends Article 14 or 19 (1)(g) and it is not liable to be declared as unconstitutional. That apart, the petitioner being a licensed trader, he could continue the trade of storage and sale of explosive substances or materials, strictly in terms of the licence and the amended rule enforces restrictions on persons other than licencees.

5. The only question that arises for consideration in this writ petition is:-

whether the amended rule is liable to be declared as unconstitutional ?

6. Heard Mr. Parthasarathy, learned counsel appearing for

the petitioner, Mrs. Meera Gupta, learned Additional Central Government Standing Counsel, appearing for respondents 1 to 3 and Ms. Velumani, learned Additional Government Pleader, ap respondents 4 and 5. With the consent of either side, the writ petition itself is taken up for final disposal.

7. Section 18 of The Explosives Act, 1884 prescribes the procedure for making, publication and confirmation of Rules. According to Sub Section (1) of Section 18, an authority making rules under the Act shall, before making the rules, publis f the proposed rules for the information of the persons likely to be affected thereby. Such publication is required to be made in such a manner as the Central Government may, from time to time, satisfy or prescribe in this behalf. A draft notice shall be published specifying a date by which the proposal to amend will be taken up for consideration. All objections or suggestions received before the date specified, shall be taken into consideration. A rule made under the Act shall not take effect until it has been published in the Official Gazette. Sub Section (5) of Section 18 provides that the publication in the Official Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made, and, if it requir es sanction, that it has been duly sanctioned. Sub Rule (8) provides that all rules made shall be laid before each House of Parliament. Under Rule 114 (1)(c), a restriction is imposed for possession of gun powder not exceeding 5 kgs and 50 metres of sa fety fuse and it is banned in the State of Tamil Nadu. Rule 114 (1)(c) reads thus:

" (c) by any person for his own private use and not for sale of gunpowder not exceeding 5 kilograms and 50 metres of safety fuse for blasting, in any state other than Bihar, Kerala, Tamilnadu and West Bengal and of small arm nitro-compound not exce g 5 kilograms except in the state of Kerala and Tamilnadu."

9. In this writ petition, the restriction imposed insofar as the State of Tamil Nadu is concerned, is being challenged. The petitioner is a licensed dealer under The Explosives Act as well as under The Indian Arms Act, 1959. As a dealer, doubt that the petitioner is licenced to store or sell safety fuses, to trade in gunpowder or fuses of such a quantity strictly in terms of the licence.

10. The provisions of The Explosives Act, 1884 was challenged before this Court and the same was repelled holding that The Explosives Act is not ultra vires of the Constitution since the restrictions imposed therein by requiring a licence isition, holding and disposal of property are restrictions permissible under Clause (6) of Article 19 of the Constitution. In In re Sundara (A.I.R. 1953 Madras 142), it has been held thus:-

"It is no doubt true that under the Constitution of India any citizen has the right to acquire, hold and dispose of property in any place to which he goes or in which he resides and that place may be anywhere within the Indian Union and that the exp ion "property" includes every interest one may have in any and everything that is the subject of ownership by man together with right to freely possess, enjoy and dispose of the same:- 'Metropolitan Trust Co. v. Jones', 149 ALR 1416. It is also quite tru e that the right of

every citizen to practice any profession or to carry on any occupation, trade or business is guaranteed under the next clause. But it is also equally obvious that these freedoms are subject to the same conditions and restrictions as t he freedom vouchsafed under the other clauses of Art. 19, viz., that restrictions may be imposed upon the use of property or in practising one's profession, trade etc. in promotion of the public welfare, convenience, health and general prosperity. That e xplosives should not be manufactured and that explosive substances should not be stocked except under conditions which would not be detrimental to the public safety, health and convenience requires no explanation whatsoever. Therefore, the restrictions i mposed on the acquisition, holding and disposal of property, that is to say, explosives and explosive substances and the right to practise one's profession, trade etc., in manufacturing explosives are restrictions permissible under clause (6) of Art. 19 of the Constitution. Consequently, it cannot be stated at all that the Explosives Act is 'ultra vires' of the Constitution and cannot be justified under the proviso in Art.19 (6) of the Constitution."

11. One of the contention advanced is that the amended rule has not been placed before the Parliament. In this respect, in the counter filed by respondents 1 to 3, it has been asserted that the amended rule was placed before both the Houses ent. There being no reply and when it is asserted by respondents 1 to 3, this Court has to accept the same and hold that the rule has been amended validly and the amended rule has been placed before both the Houses of Parliament.

12. It is the specific case of the respondents that the State of Tamil Nadu made a request to amend the Rule 114(1)(c) as there were large scale of misuse or abuse by being in possession of gunpowder and safety fuses. As free possession of and safety fuses even the minimum level of 5 kgs or length of 50 metres has, according to the learned Additional Central Government Standing Counsel, resulted in breach of peace and safety of the State was at stake, which has necessitated the State Gover nment to request the Central Government to amend Rule 114(1)(c) so that possession of even minimum quantity of gunpowder and fuses is banned in the State. Such a ban, it has been pointed out, is applicable to all, but a licensee is entitled to secure t he licence and store gunpowder or safety fuses in terms of the licence granted under the Act. The petitioner, being a licenced dealer, according to him, if he possess a valid licence, will be entitled to store gunpowder or safety fuses to the extent, th e licence authorises him. The petitioner has approached this Court on the misconception and on the assumption that there is a total ban on possession of gunpowder and safety fuses even by a licensed dealer.

13. In terms of Clause (6) of Article 19, a State could always make laws imposing such restriction or regulation in the interest of the general public and such reasonable restriction on the exercise of the rights conferred by Article 19(1)(estriction could be imposed by the State by a law and it is within the ambit of competence of the Legislature. Such laws

shall not contravene any other provision of The Constitution, which constitute limitation upon the Legislature. The possession and enjoyment of all rights are subject to such reasonable condition as may be deemed by the governing authority of the country to be essential to the safety, health, general public etc. The expression " for the interest of public order " has a wider meanin g and significance and the legislature will be right in imposing restriction. There is no doubt that the restriction imposed has a rational nexus/ connection with the object sought to be achieved by amending the rules. The restriction imposed is not ex cessive by which mischief is sought to be prevented or the object is sought to be achieved by the law. It is also the settled legal position that in case of dangerous or flammable or explosive substances, there could be a restriction as well as a total ban of being in possession of explosive substances or safety fuses but subject to licence. In so far as the individuals are concerned, there is a total ban of being in possession of explosives or safety fuses in the State and they have to secure actual users licence for bonafide uses. But so far as the licensed traders are concerned, there is no ban, but there is a regulatory measure. Taking into consideration of the fact that the State Government has made a request for ban on storing explosives or s afety fuses by persons other than licensed dealers, the prohibition in respect of those individuals is not a violative prohibition and it is saved by Article 19(6). Therefore, the contention that it is violative of Article 19(1)(g) cannot be sustained .

14. Nextly, it was contended that the amendment is violative of Article 14. This contention is also a misconception as the prohibition is in respect of the entire State of Tamil Nadu. Such restriction is not discriminatory as it is the St ent, which is entrusted with the enforcement of law, submitted a proposal for banning the possession of explosives as well as safety fuses in the State, taking into consideration of the public interest, peace, security of State, so also the State of Kera la, and such restriction is not discriminatory. Imposing such a ban for the State of Tamil Nadu is not violative of Article 14 as there could be a valid ban or restriction in respect of whole State with respect to a portion of Central Laws or the rules framed thereunder. The contention that Article 14 has been violated cannot be countenanced. The third contention also fails.

15. In the circumstances, this Court holds that Rule 114(1)(c) as introduced by notification G.S.R.No.197 (E) dated 5th March, 1999 in no way offends Article 14 or 19(1)(g) and the said amendment has been validly made by following the proced bed under Section 18 of The Explosives Act. When the Legislature has prescribed a particular mode of publication with respect to the proposal, the petitioner cannot have any grievance in that respect. It is clear that there has been a publication for t he proposal to amend and there being no objection, the amendment has been given effect to. The amended rule also has been placed before both the Houses of Parliament. In terms of Section 18(6), the publication in the Official Gazette of a rule purporti ng to be made under this Act shall be a conclusive evidence that it has been duly made, and, if it requires sanction, that it has been duly sanctioned. The rule of presumption provided for in Sub Section (6) of Section 18 squarely applies.

16. In the light of the above discussions and while following the earlier judgment of this Court, this Court holds that the challenge to the amendment introduced to Rule 114(1)(c) insofar as the State of Tamil Nadu is concerned cannot be co it is a valid rule and it is not liable to be declared as unconstitutional as prayed for. Hence, the writ petition is dismissed. No costs. Consequently, W.M.P.No.6287 of 2000 is also dismissed.

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To

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